



State of Wisconsin • DEPARTMENT OF REVENUE

2135 RIMROCK RD. • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Scott Mc Callum
Governor

Richard G. Chandler
Secretary of Revenue

August 29, 2002

✓
Honorable Judith Robson
Co-Chair Joint Committee for Review
of Administrative Rules
Rm 115 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Glenn Grothman
Co-Chair Joint Committee for Review
of Administrative Rules
Rm 15 North State Capitol
PO Box 8952
Madison WI 53708-8952

Re: Clearinghouse Rule 99-101

Dear Senator Robson and Representative Grothman:

Enclosed are copies of Clearinghouse Rule 99-101 in final draft form, and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats.

Sincerely,

Richard G. Chandler
Secretary of Revenue

RGC:MPW:cll
e:rules\1166 Committees - JCRAR

Enclosure

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 99-101
SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule changes are necessary to:

- Clarify the content of and list the services discussed in Tax 11.66.
- Remove cable television system services from Tax 11.66, because they are taxed separately from telecommunications services.
- Provide additional definitions, of "communications channel," "customer channel termination point," "private communication service" and "telecommunications services."
- Reflect the tax treatment of certain telecommunications services which originate or terminate in Wisconsin, per the amendment of s. 77.52(2)(a)5., Stats., by 1997 Wis. Act 27.
- Reflect the tax treatment of prepaid telephone calling cards and authorization numbers, per the amendment of s. 77.52(2)(a)5., Stats., and the creation of s. 77.52(3m), Stats., by 1997 Wis. Act 237.
- Reflect the credit for taxes paid to other states, per the creation of s. 77.525, Stats., by 1997 Wis. Act 27.
- List telecommunications message services as taxable services and remove nonmechanical telephone answering services from the listing of nontaxable services, per the creation of s. 77.52(2)(a)5m., Stats., by 1997 Wis. Act 27.
- List additional taxable telecommunications services, to reflect technological advances.
- Update grammar and style per Legislative Council Rules Clearinghouse standards.

Public Hearing

A public hearing was held on August 26, 2002. Prior to the hearing, the department met with representatives of several telecommunications companies and revised the proposed order based on those meetings. Representatives of those companies appeared at the hearing, and all of them advised the department that they support the proposed order as it now exists.

Legislative Council Staff Recommendations

The Legislative Council staff reviewed the proposed order and did not have any comments or make any recommendations.

Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
REPEALING, RENUMBERING, RENUMBERING AND AMENDING,
AMENDING, REPEALING AND RECREATING AND CREATING RULES**

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 11.66(4)(d) and (e); **renumber** Tax 11.66(1)(b), (2)(b)1. to 5., (4)(b) and (5); **renumber and amend** Tax 11.66(2)(intro.), (a) and (b)(intro.) and (4)(intro.), (a), (c) and (f); **amend** Tax 11.66(title); **repeal and recreate** Tax 11.66(1)(a) and (3); and **create** Tax 11.66(1)(b), (c) and (e), (2)(intro.), (a)(title) and (b), (4), (5)(d), (6) and (7), **relating to** communication services.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(17m) and (21m), 77.52(2)(a)5. and 5m., (2m) and (3m) and 77.525, Stats.

SECTION 1. Tax 11.66(title) is revised, to remove cable television system services and to clarify that the section applies to telecommunications services and telecommunications message services.

SECTIONS 2 TO 4. Tax 11.66(1)(a) is repealed and recreated, sub. (1)(b) is renumbered sub. (1)(d), and new subs. (1)(b), (c) and (e) are created. The definition of "private line" is removed because of the repeal of Tax 11.66(4)(d), as explained in section 9. The recreated par. (a) and the new pars. (b), (c) and (e) define "communications channel," "customer channel termination point," "private communication service" and "telecommunications services."

SECTIONS 5 AND 6. Tax 11.66(2)(intro.), (a) and (b)(intro.) and 1. to 5. are renumbered Tax 11.66(2)(a)(intro.), 1. and 2.(intro.) and a. to e. and new sub. (2)(intro.), (a)(title) and (b) are created, to clarify the content of sub. (2) and list the types of services discussed in Tax 11.66.

Tax 11.66(2)(a)(intro.) as renumbered is revised, to clarify that par. (a) does not apply if the provisions of sub. (3) apply.

Tax 11.66(2)(a)1. as renumbered is revised and examples are added, to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin.

Tax 11.66(2)(a)2.(intro.) as renumbered is revised, to update language per Legislative Council Rules Clearinghouse ("Clearinghouse") standards.

SECTION 7. Tax 11.66(3) is repealed and recreated. Some of the taxable services listed in the repealed sub. (3) are moved to new sub. (4), as described in section 11. The new sub. (3) discusses private communication service.

SECTIONS 8 AND 9. Tax 11.66(4)(intro.) and (a) to (c) are renumbered Tax 11.66(5)(intro.) and (a) to (c). As renumbered, Tax 11.66(5)(intro.) and (c) are revised, to correct grammar and punctuation in conformity with Clearinghouse standards, and to clarify that the sale of the services to the reseller are nontaxable because they are resold.

Tax 11.66(5)(a) as renumbered is revised and sub. (4)(d) is repealed, to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin, as a result of the amendment of s. 77.52(2)(a)5. Stats., by 1997 Wis. Act 27.

Tax 11.66(4)(e) is repealed, to remove nonmechanical telephone answering services from the listing of nontaxable services, as a result of the creation of s. 77.52(2)(a)5m., Stats., by 1997 Wis. Act 27.

SECTION 10. Tax 11.66(4)(f) is renumbered Tax 11.66(5)(e) and revised, to clarify that the sale of the services to the interexchange carrier are nontaxable because they are resold.

Tax 11.66(5) is renumbered Tax 11.66(8), to reflect the creation of new subsections as explained in section 11.

SECTION 11. Tax 11.66(4) is created, to list taxable services. Several taxable telecommunications services that were previously listed in the repealed sub. (3) are included, as well as additional items not previously listed, to reflect technological advances. The listing for cable television system services in the repealed sub. (3) is removed, because they are taxed separately from telecommunications services. The listing for local and toll service is revised, to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin, as a result of the amendment of s. 77.52(2)(a)5. Stats., by 1997 Wis. Act 27. Taxable telecommunications message services are added, as a result of the creation of s. 77.52(2)(a)5m., Stats., by 1997 Wis. Act 27.

Tax 11.66(5)(d) is created, to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin, as a result of the amendment of s. 77.52(2)(a)5. Stats., by 1997 Wis. Act 27.

Tax 11.66(6) is created, to reflect the tax treatment of prepaid telephone calling cards and authorization numbers, as a result of the amendment of s. 77.52(2)(a)5., Stats., and the creation of s. 77.52(3m), Stats., by 1997 Wis. Act 237.

Tax 11.66(7) is created, to reflect the credit for taxes paid to other states, as a result of the creation of s. 77.525, Stats., by 1997 Wis. Act 27.

SECTION 1. Tax 11.66(title) is amended to read:

Tax 11.66(title) **Telecommunications and CATV telecommunications message services.**

SECTION 2. Tax 11.66(1)(a) is repealed and recreated to read:

Tax 11.66(1)(a) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

SECTION 3. Tax 11.66(1)(b) is renumbered Tax 11.66(1)(d).

Note to Revisor: Move the note that follows Tax 11.66(1)(b) before renumbering to follow Tax 11.66(1)(d) as renumbered.

SECTION 4. Tax 11.66(1)(b), (c) and (e) are created to read:

Tax 11.66(1)(b) "Customer channel termination point" means the location where the customer either inputs or receives the private communication service.

(c) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of the channel or channels.

(e) "Telecommunications services" has the same meaning as in s. 77.51(21m), Stats.

Note to Revisor: Add the following note after Tax 11.66(1)(e) as created:

Note: Telecommunications services as defined in s. 77.51(21m), Stats., "means sending messages and information transmitted through the use of local, toll and wide-area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two-way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. 'Telecommunications services' does not include sending collect telecommunications that are received outside of the state. "

SECTION 5. Tax 11.66(2)(intro.), (a) and (b)(intro.) and 1. to 5. are renumbered Tax 11.66(2)(a)(intro.), 1. and 2.(intro.) and a. to e., and as renumbered Tax 11.66(2)(a)(intro.), 1. and 2.(intro.) are amended to read:

Tax 11.66(2)(a)(intro.) ~~The~~ Except as provided in sub. (3), the sale of telecommunications services is subject to Wisconsin sales or use tax if both of the following occur:

1. The service originates or terminates in Wisconsin.

Note to Revisor: Add the following examples at the end of Tax 11.66(2)(a)1. as renumbered:

Examples: 1) Mary Jones places a telephone call from her home in Wisconsin to Bill Jones in Illinois. The call originated in Wisconsin since it was placed from a telephone in Wisconsin.

2) Mary Jones receives a collect call at her home in Wisconsin. The call was placed by Bill Jones from a telephone in Illinois. The call terminated in Wisconsin since it was received in Wisconsin.

2.(intro.) The service is charged to a service address in Wisconsin, regardless of the location where that charge is billed or paid. These charges include the following:

Note to Revisor: Add the following example at the end of Tax 11.66(2)(a)2.d. as renumbered:

Example: Ed Brown has a credit card issued by DEF Corporation but uses ABC Corporation as his dial 1 equal access service provider. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a service address in Wisconsin, regardless of whether the telephone number or account number appear on the bill and regardless of where the bill is mailed.

SECTION 6. Tax 11.66(2)(intro.), (a)(title) and (b) are created to read:

Tax 11.66(2)(intro.) GENERAL. This subsection describes the conditions under which telecommunications services and telecommunications message services are taxable. The conditions are as follows:

(a)(title) *Telecommunications services.*

(b) *Telecommunications message services.* Telecommunications message services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction are taxable, except that those services are not taxable if either of the following apply:

1. They are merely an incidental element of another service that is sold to the purchaser and is not taxable.

2. The situs of the service is outside this state. The situs of a telecommunications message service is the location where the customer, or someone at the direction of the customer, receives the message.

SECTION 7. Tax 11.66(3) is repealed and recreated to read:

Tax 11.66(3) PRIVATE COMMUNICATION SERVICE. The origination, termination, service address and credit for tax paid to another state for private communication service are determined as follows:

(a) Private communication service for a separate charge related to a customer channel termination point located in Wisconsin is subject to Wisconsin sales or use tax.

(b) Private communication service where all customer channel termination points are located in Wisconsin is subject to Wisconsin sales or use tax.

(c) Of the charge for a segment of a communications channel for private communication service between two customer channel termination points, 50% is subject to Wisconsin sales or use tax if one customer channel termination point is in Wisconsin and the other customer channel termination point is outside Wisconsin and segments of the communications channel are separately charged.

(d) If segments of a communications channel are located in Wisconsin and outside Wisconsin and the segments are not separately billed, the percentage of the charge for private communication service subject to Wisconsin sales or use tax is determined by dividing the number of customer channel termination points in Wisconsin by the total number of customer channel termination points.

(e) No credit for tax paid to another state is allowed where the other state apportions the service in a manner similar to that provided in pars. (c) and (d).

Examples: 1) Company A contracts with Telecommunications Provider B for private communication service to send data from Company A's bank, located in Milwaukee, Wisconsin, to Company A's automated teller machines or "ATMs," located in Waukesha, Wisconsin, and to send data from its ATMs in Waukesha to its bank in Milwaukee. The charge by Telecommunications Provider B to Company A is based on a certain amount of dedicated channel capacity available to Company A on the communications channel, regardless of the volume of data transmitted or number of transmissions made by Company A. Telecommunications Provider B refers to this service as "private line service." These services originate and terminate in Wisconsin and all of the charge is subject to Wisconsin sales or use tax.

2) Company JKL, headquartered in Milwaukee, Wisconsin, has branch offices in Madison, Wisconsin, Green Bay, Wisconsin, Chicago, Illinois and Minneapolis, Minnesota. Company JKL contracts with a telecommunications company for private communication service

to send messages between and among its Milwaukee office and the branch offices. Company JKL has exclusive use of the channels while using them. The telecommunications company sells use of the communications channels to other parties while Company JKL is not using them. The charges by the telecommunications company to Company JKL are based on a certain amount of dedicated channel capacity available to Company JKL on the communications channels. The telecommunications company does not bill separately for the segments of the communications channel. Increasing capacity requires a higher charge. The telecommunications company refers to this service as "private line service." Of the charges by the telecommunications company to Company JKL for this service, 60% are subject to Wisconsin sales or use tax because 3 of the 5 customer channel termination points are located in Wisconsin.

SECTION 8. Tax 11.66(4)(intro.) and (a) to (c) are renumbered (5)(intro.) and (a) to (c), and as renumbered Tax 11.66(5)(intro.), (a) and (c) are amended to read:

Tax 11.66(5)(intro.) NONTAXABLE SERVICES. Gross receipts from the sale of or charge for the following services are not taxable:

(a) ~~Interstate or international telecommunications service if the service originates from another state or country or if the service originates in Wisconsin but is charged to a service address in another state or country.~~

(c) ~~Access Transfers of access services, Measured Toll Service, ~~or MTS,~~ or "MTS" and Wide-Area Telecommunications Service, ~~or WATS,~~ services resellers or "WATS" services to resellers who purchase, repackage, and resell the services to customers. The reseller is liable for sales tax on its final retail sales of those services.~~

SECTION 9. Tax 11.66(4)(d) and (e) are repealed.

Note to Revisor: Remove the example that follows Tax 11.66(4)(d) before its repeal.

SECTION 10. Tax 11.66(4)(f) and (5) are renumbered Tax 11.66(5)(e) and (8), and as renumbered Tax 11.66(5)(e) is amended to read:

Tax 11.66(5)(e) Transfers of services, commonly called "access services," to an interexchange carrier which permit the origination or termination of telephone messages between a customer in this state and one or more points in another telephone exchange, and which are resold by the interexchange carrier. The interexchange carrier is liable for sales tax on its final retail sales of those services.

SECTION 11. Tax 11.66(4), (5)(d), (6) and (7) are created to read:

Tax 11.66(4) TAXABLE SERVICES. Gross receipts that are subject to Wisconsin sales or use tax include gross receipts from the sale of the following services:

(a) Telecommunications services, including the following:

1. Local and toll service and Wide-Area Telecommunications Service or "WATS."
2. Channel services.
3. Telegraph services.
4. Teletypewriter services.
5. Computer exchange services.
6. Cellular mobile telecommunications services.
7. Specialized mobile radio services and any other form of mobile one-way or two-way communications service.
8. Stationary two-way radio services.
9. Paging services.
10. Facsimile, or FAX, transmission services.
11. Teleconferencing services.
12. Call forwarding services.
13. Caller ID services.
14. Internet access services.
15. Any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.

Note: Refer to sub. (6) regarding the sale of rights to purchase telecommunications services.

(b) Telecommunications message services, including the following:

1. Nonmechanical telephone answering services.

Examples: 1) A real estate business, whose employees spend considerable periods of time away from its office, contracts with Company A to answer incoming telephone calls during periods when employees are not available to answer the telephone. Employees of Company A receive the calls to the real estate office by telephone, take messages from incoming callers and transmit the messages to the real estate company or particular employees in that company. The service provided by Company A is not an incidental element of another service sold by the company that is not a taxable service. Company A's charge for this service is subject to Wisconsin sales or use tax.

2) Company B employs an office management service that provides receptionist, typing, filing, scheduling, bookkeeping and similar services. Employees of the office management service also answer and route incoming telephone calls. When calls cannot be routed, the office management service takes and transmits messages to the appropriate person. This answering service is only a small part of the total services provided.

The telephone answering service provided as a part of the office management service is not subject to Wisconsin sales or use tax because it is incidental to the office management service provided and that office management service is not taxable.

2. Security monitoring services that consist of recording a telecommunications message and notifying the customer or local authorities of the message.

3. Electronic mail services.

4. Mechanical or electronic voice messaging and telephone answering services.

Example: Company A provides its customers access to an office message system computer through which a customer can deposit or retrieve telephone messages using a touch-tone telephone. The service may be used as a message center, a call forwarding service or an answering service. Messages are stored in the computer, and the customer may send or retrieve messages, reply to a message directly, reroute messages to others, broadcast messages to a wider group, save selected messages and cancel messages no longer needed. The service is available 24 hours a day, and the customer accesses the computer through either a toll-free telephone number or a local telephone number. The service provided by Company A is not an incidental element of another service sold by the company that is not a taxable service. Company A's charges for this service are subject to Wisconsin sales or use tax.

(5)(d) Services that are obtained by means of a toll-free number, that originate outside Wisconsin and terminate in Wisconsin.

(6) PREPAID TELEPHONE CALLING CARDS AND AUTHORIZATION NUMBERS. (a)

The sale of rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code, is subject to Wisconsin sales or use tax.

(b) The situs of the sale of the rights to purchase telecommunications services is as follows:

1. If the sale takes place at a retailer's place of business, the situs of the sale is that place of business.

2. If the sale does not take place at a retailer's place of business and an item that will implement the right to purchase telecommunications services, such as a calling card, is shipped, the situs of the sale is the customer's shipping address.

3. If the sale does not take place at a retailer's place of business and no item that will implement the right to purchase telecommunications services is shipped, the situs of the sale is the customer's billing address.

(7) CREDIT FOR TAX PAID TO ANOTHER STATE. Except as provided in sub. (3), any person who is subject to the tax under s. 77.52(2)(a)5., Stats., on telecommunications services that terminate in Wisconsin and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to Wisconsin by an amount equal to the similar tax properly paid to another state on those services or by the amount due Wisconsin on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under s. 77.52(2)(a)5., Stats., was passed on an amount equal to the amounts not remitted.

Note to Revisor: 1) Replace the first note at the end of Tax 11.66 with the following:

Note: Section Tax 11.66 interprets ss. 77.51(17m) and (21m), 77.52(2)(a)5. and 5m., (2m) and (3m) and 77.525, Stats.

2) Replace the third note at the end of Tax 11.66 with the following:

Note: The interpretations in s. Tax 11.66 are effective under the general sales and use tax law on or after September 1, 1969, except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982; (c) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; (d) Telecommunications services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31; (e) Telecommunications services originating in Wisconsin and charged to a service address in Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 31; (f) The repeal of the exemption for equipment in central offices of telephone companies became effective September 1, 1995, pursuant to 1995 Wis. Act 27; (g) Telecommunications services

paid for by the insertion of coins in a coin-operated telephone became taxable August, 1, 1996, pursuant to 1995 Wis. Act 351; (h) Certain telecommunications message services became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (i) Telecommunications services originating outside Wisconsin, terminating in Wisconsin and charged to a service address in Wisconsin, except certain services obtained by means of a toll-free number, became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (j) Credit for sales tax properly paid to another state on interstate telecommunications services became effective October 14, 1997, pursuant to 1997 Wis. Act 27; (k) Sales of rights to purchase telecommunications services became taxable August 1, 1998, pursuant to 1997 Wis. Act 237; and (L) The exemption for interstate private line services no longer applies, effective [Revisor insert effective date of rule order].

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: _____

8/29/02

By: _____



Richard G. Chandler
Secretary of Revenue

e:\rules\1166 Proposed Order

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
- CORRECTED SUPPLEMENTAL

LRB #
INTRODUCTION #
Admin. Rule # Tax 11.66

Subject
 Sales and Use Tax Treatment Relating to Telecommunications Services and Telecommunications Message Services

Fiscal Effect

State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation	<input type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	

Local: No Local Government Costs

- | | | |
|--|---|--|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:
<input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
<input type="checkbox"/> Counties <input type="checkbox"/> Others _____
<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | |

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The proposed order updates the Department of Revenue's Administrative Code relating to telecommunications services and telecommunications message services. The changes incorporate recent law changes, clarify existing language to reflect the Department's current position, and alter style and format to conform to Legislative Council Clearinghouse standards. These rule changes do not have a fiscal effect.

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue John T. Stott, (608) 266-9706	Authorized Signature/Telephone No. Yeang-Eng Braun (608) 266-2700 	Date 5/28/99
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